

**BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS**

KS State Board of Healing Arts

In the Matter of)
)
Ahmed Asfari, M.D.)
Postgraduate Permit No. 94-07618)

Docket No. 14-HA 00156

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Seth K. Brackman, Associate Litigation Counsel (“Petitioner”), and Ahmed Asfari, M.D (“Licensee”), by and through his attorney Aaron J. Good of Klenda Austerman, LLC, and moves the Board for approval of a Consent Order affecting Licensee’s postgraduate permit to practice medicine and surgery in the State of Kansas. The Parties stipulate and agree to the following:

1. Licensee’s last known mailing address to the Board is: 1010 N. Kansas, Wichita, Kansas 67214.
2. Licensee is or has been entitled to engage in the practice of medicine and surgery in the State of Kansas, having been issued Postgraduate Permit No. 94-07618 on or about July 1, 2011. Licensee’s postgraduate permit is current.
3. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of the healing arts, specifically the practice of medicine and surgery. K.S.A. 65-2801 *et seq.* and K.S.A. 65-2869.
4. A postgraduate permit authorizes Licensee to practice the healing arts in the postgraduate training program, but does not authorize Licensee to engage in the private practice of the healing arts. K.S.A. 65-2811(c).

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5. This Consent Order and the filing of such document are in accordance with applicable law and the Board has jurisdiction to enter into the Consent Order as provided by K.S.A. 77-505 and 65-2838. Upon approval, these stipulations shall constitute the findings of the Board, and this Consent Order shall constitute the Board's Final Order.
6. The Kansas Healing Arts Act is constitutional on its face and as applied in the case. Licensee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.
7. A protective order is hereby entered to protect all confidential information under 42 CFR Part II and K.S.A. 65-4925.
8. Licensee voluntarily and knowingly waives his right to a hearing. Licensee voluntarily and knowingly waives his right to present a defense by oral testimony and documentary evidence, to submit rebuttal evidence, and to conduct cross-examination of witnesses. Licensee voluntarily and knowingly agrees to waive all substantive and procedural motions and defenses that could be raised if an administrative hearing were held.
9. The terms and conditions of the Consent Order are entered into between the undersigned parties and are submitted for the purpose of allowing these terms and conditions to become an Order of the Board. This Consent Order shall not be binding on the Board until an authorized signature is affixed at the end of this document. Licensee specifically acknowledges that counsel for the Board is not authorized to sign this Consent Order on behalf of the Board.

10. The Board has received information, and investigated the same, and has reason to believe that there may be grounds pursuant to K.S.A. 65-2811(d)(2) to take action with respect to Licensee's postgraduate permit under the Kansas Healing Arts Act , K.S.A. 65-2801, *et seq.*
11. Licensee is working as part of the postgraduate program for pediatric medicine at Wesley Medical Center in Wichita, Kansas, as part of his residency program with Kansas University School of Medicine—Wichita.
12. On or March 20, 2013, the Board received a complaint from Blue Cross Blue Shield (BCBS) of Kansas, notifying the Board that Licensee had written prescriptions for Patient 1 without maintaining patient records and without lab results showing Patient 1's testosterone levels supporting the need for the prescription.
13. Patient 1 is the parent of one of the children treated by Licensee as part of his postgraduate program. Patient 1 and Licensee became friends.
14. On or about March 13, 2012, approximately one year prior to the complaint, Licensee telephoned a prescription for Axiron 30mg, a topical testosterone gel, for Patient 1. This prescription included one (1) refill.
15. On or about August 27, 2012, Licensee telephoned a prescription for Axiron 30mg, for Patient 1, with three (3) refills.
16. In January/February 2013, Licensee again prescribed Axiron 30mg for Patient 1.
17. BCBS contacted Licensee requesting a prior authorization form to be filled out per a new BCBS policy. The prior authorization form required a copy of the lab results supporting the need for the prescription.

18. Licensee provided a prior authorization form without any supporting medical records to BCBS.
19. Licensee did not keep any medical records regarding his care and treatment of Patient 1; rather, Licensee based his medical opinion of Patient 1's need for testosterone on a foreign lab result from Syria provided by Patient 1.
20. Licensee acknowledges that if formal hearing proceedings were conducted and Licensee presented no exhibits, witnesses, or other evidence, the Board has sufficient evidence to prove that Licensee has violated the Kansas Healing Arts Act with respect to the above allegations. Licensee further waives his right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.
21. Pursuant to K.S.A. 65-2811(d)(2), a postgraduate permit "shall be canceled if: . . . (2) the holder thereof has engaged in the practice of the healing arts outside of the postgraduate training program."
22. According to K.S.A.77-505, the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.
23. All pending investigation materials in KSBHA Investigation Numbers 13-00496 and 14-00647 regarding Licensee were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel No. 28. Disciplinary Panel No. 28 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.
24. Licensee further understands and agrees that if the Board finds, after due written notice and an opportunity for a hearing, that Licensee has failed to comply with

any of the terms of this Consent Order, the Board may immediately impose any sanction provided for by law, including but not limited to suspension or revocation of Licensee's postgraduate permit to practice medicine and surgery in the State of Kansas. Licensee hereby expressly understands and agrees that, at any such hearing, the sole issue shall be whether Licensee has failed to comply with any of the terms or conditions set forth in this Consent Order. The Board acknowledges that at any such hearing, Licensee retains the right to confront and examine all witnesses, present evidence, testify on his own behalf, contest the allegations, present oral argument, appeal to the courts, and all other rights set forth in the Kansas Administrative Procedures Act, K.S.A. 77-501 *et seq.*, and the Kansas Healing Arts Act, K.S.A. 65-2801 *et seq.*

25. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Kansas Healing Arts Act, or to investigate complaints received under the Risk Management Law, K.S.A. 65-4921 *et seq.*, that are known or unknown and are not covered under this Consent Order, or to initiate formal proceedings based upon known or unknown allegations of violations of the Kansas Healing Arts Act.

26. Licensee hereby releases the Board, its individual members (in their official and personal capacity), attorneys, employees and agents, hereinafter collectively referred to as "Releasees", from any and all claims, including but not limited to those alleged damages, actions, liabilities, both administrative and civil, including the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.* arising out of the investigation and acts leading to the execution of this Consent Order. This release

shall forever discharge the Releasees of any and all claims or demands of every kind and nature that Licensee has claimed to have had at the time of this release or might have had, either known or unknown, suspected or unsuspected, and Licensee shall not commence to prosecute, cause or permit to be prosecuted, any action or proceeding of any description against the Releasees.

27. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to any entities authorized to receive disclosure of the Consent Order.

28. This Consent Order, when signed by both parties, constitutes the entire agreement between the parties and may only be modified or amended by a subsequent document executed in the same manner by the parties.

29. Licensee agrees that all information maintained by the Board pertaining to the nature and result of any complaint and/or investigation may be fully disclosed to and considered by the Board in conjunction with the presentation of any offer of settlement, even if Licensee is not present. Licensee further acknowledges that the Board may conduct further inquiry as it deems necessary before the complete or partial acceptance or rejection of any offer of settlement.

30. Licensee, by signature to this document, waives any objection to the participation of the Board members, including the Disciplinary Panel and General Counsel, in the consideration of this offer of settlement and agrees not to seek the disqualification or recusal of any Board member or General Counsel in any future proceedings on the basis that the Board member or General Counsel has received

investigative information from any source which otherwise may not be admissible or admitted as evidence.

31. Licensee acknowledges that he has read this Consent Order and fully understands the contents.

32. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.

33. All correspondence or communication between Licensee and the Board relating to the Consent Order shall be by certified mail addressed to:

Kansas State Board of Healing Arts
Attn: Compliance Coordinator
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

34. Licensee shall obey all federal, state and local laws and rules governing the practice of medicine and surgery in the State of Kansas that may be in place at the time of execution of the Consent Order or may become effective subsequent to the execution of this document.

35. Upon execution of this Consent Order by affixing a Board authorized signature below, the provisions of this Consent Order shall become an Order under K.S.A. 65-2838. This Consent Order shall constitute the Board's Order when filed with the office of the Executive Director for the Board and no further Order is required.

36. This Consent Order constitutes disciplinary action.

37. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.

38. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action against his State of Kansas postgraduate permit to engage in the practice of medicine and surgery:

CANCELLATION OF POSTGRADUATE PERMIT

39. Licensee's postgraduate permit to practice medicine and surgery in the State of Kansas shall be cancelled. The cancellation shall take effect on June 20, 2014.

EDUCATION

40. Licensee shall attend and successfully complete at least ten (10) hours of Continuing Medical Education ("CME"), specifically in the areas of medical record keeping/documentation and proper prescribing practices. Such program(s) shall be at Licensee's own expense.

41. Licensee shall provide the course completion certificates no later than July 31, 2014, to:

Kansas State Board of Healing Arts
Attn: Compliance Coordinator
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

42. These hours shall be in addition to those hours required for renewal of licensure.

APPROVAL OF SUPPLEMENTAL POSTGRADUATE PERMIT

43. Licensee's application for a supplemental postgraduate permit to practice medicine and surgery in the State of Kansas is approved. Licensee's Supplemental Postgraduate Permit shall be effective June 21, 2014, through July 31, 2014.

IT IS THEREFORE ORDERED that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact, conclusions of law, and as a Final Order of the Board.

IT IS SO ORDERED on this 18 day of June, 2014.

**FOR THE KANSAS STATE
BOARD OF HEALING ARTS:**

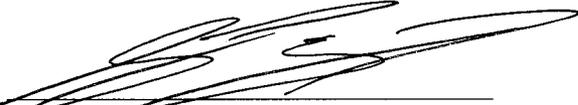

Kathleen Selzler Lippert
Executive Director

6/18/14
Date


Ahmed Asfari, M.D.
Licensee

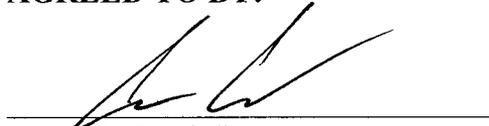
5/23/14
Date

PREPARED AND APPROVED BY:



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Kansas Board of Healing Arts
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AGREED TO BY:



Aaron J. Good, # 25067
Klenda Austerman, LLC
1600 Epic Center
301 N. Main
Wichita, Kansas 67202-4816
Attorney for Licensee

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the Consent Order by United States mail, first class, postage prepaid, on this 20th day of June, 2014, to the following:

Ahmed Asfari, M.D.
1010 N. Kansas
Wichita, Kansas 67214

Aaron J. Good
1600 Epic Center
301 N. Main
Wichita, Kansas 67202-4816
Attorney for Licensee

and the original was hand-filed with:

Kathleen Selzler Lippert
Executive Director
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

and a copy was delivered to:

Seth K. Brackman
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Compliance Coordinator
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Katy Lenahan
Licensing Administrator
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612



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